Supreme Court, U.S.
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NO. 91-77

IN THE

Supreme Court of the United States

October Term, 1991

DENNIS EDWARD RYAN,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

Petition for a Writ of Certiorari To the Colorado Supreme Court

REPLY BRIEF FOR PETITIONER

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August 12, 1991

Respondent suggests three reasons for denying certiorari in this case. None is sound.

1. Respondent first argues that petitioner "lacks standing to challenge the Colorado criminal libel statute on facial overbreadth grounds since his conduct falls within the legitimate reach of the statute . . . ." Respondent's brief at 5. Respondent misunderstands the overbreadth doctrine. In *Broadrick,* cited by respondent, this Court made clear that it has

> altered its traditional rules of standing to permit—in the First Amendment area—"attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity."

413 U.S. at 612 (citing *Dombrowski* v. *Pfister,* 380 U.S. 479, 486 (1965)).[1] If petitioner's conduct is "within the legitimate reach of the statute,"[2] *Broadrick* supports his standing to challenge the

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[1]Respondent also faults petitioner for not cross appealing the trial court's failure to make additional findings in his favor. Respondent's brief at 2, 5. But petitioner *prevailed* in the trial court; the charge was dismissed (App. 18a-22a). In those circumstances, he could not have cross appealed. "[A] party is not injured by, and may not appeal from, a disposition in his favor[,] . . . [a] principle [which] emerges, most clearly in cases dealing with attempts by a prevailing party to secure review of unfavorable findings." 15 Charles A. Wright, Arthur R. Miller, and Edward H. Cooper, *Federal Practice and Procedure* § 3902 (1976 and Supp. 1990); *see also Perez* v. *Ledesma,* 401 U.S. 82, 87 n.3 (1971); *New York Telephone Co.* v. *Maltbie,* 291 U.S. 645, 646 (1934); *cf. Miller* v. *Reeder,* 157 Colo. 134, 135, 401 P.2d 604, 605 (1965) ("Only parties aggrieved may appeal. The word *'aggrieved'* refers to a substantial grievance; the denial to the party of some claim of right, either of property or of person, or the imposition upon him of some burden or obligation . . . ."). Clearly, petitioner was not *required* to cross appeal.

[2]*See* Petition for a Writ of Certiorari at 12-13, n.15.

statute's overbreadth. *See also New York* v. *Ferber,* 458 U.S. 747 (1982).[3]

2. Respondent next argues that there is no actual malice or other fault requirement "here where the victim is a private person and the defamatory publication does not involve a matter of public concern." Respondent's brief at 5. Petitioner's contentions on this issue are contained at pages 5-12 of his petition for a writ of certiorari, and will not be repeated here.

3. Finally, respondent suggests that *Younger* v. *Harris,* 401 U.S. 37 (1971), may be a bar to this Court's issuance of a writ of certiorari. Respondent's brief at 5. *Younger* is no bar to review by this Court. In *Younger,* this Court reversed the issuance of an injunction by a district court which restrained a state district attorney from conducting a criminal prosecution under state law. Here, the state supreme court itself has undertaken to try to salvage, by a judicial narrowing, a concededly unconstitutional criminal libel statute. This Court should, as it has in the past, proceed to review the state court's determination, and set it aside if it is incorrect. *See Ashton* v. *Kentucky,* 384 U.S. 195 (1966); *Gooding* v. *Wilson,* 405 U.S. 518 (1972); *cf. Cox Broadcasting Corp.* v. *Cohn,* 420 U.S. 469 (1975).[4]

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[3]Of course, petitioner's principal attack on the statute is not based on the overbreadth doctrine. *See* Petition for a Writ of Certiorari at 5-12. Overbreadth challenges are only one type of facial attack. *Ferber,* 458 U.S. at 768 n.21.

[4]The judgment of the court below is sufficiently final for review by this Court. *See* Petition for a Writ of Certiorari at 2, n.1.

For the reasons set forth in the petition for a writ of certiorari, and herein, certiorari should be granted.

Respectfully submitted,

By: _____

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